

REMARKS

Claims 1, 3-7 and 9-11 are all the claims pending in the application.

Claims 1, 3 - 7 and 9 - 11 are rejected.

Claims 5, 6 and 11 are objected.

Claims 1, 3, 4, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al. (US 5,902,968) in view of Kashi et al. (US 5,828,772).

Claims 5, 6 and 11 are objected to as being dependent upon a rejected base claim.

The Applicants traverse the rejections and request reconsideration.

Claim Rejections Under 35 U.S.C. 103

Rejection of claims 1, 3, 4, 7, 9 and 10 as being unpatentable over Sato and Kashi

The Applicants respectfully amend claim to include the limitation that the controller determines a non-stroke region by comparing acceleration-related information of a fixed number of samples prior to the range of time against a threshold.

The Applicants respectfully submit that the combined teachings of Sato and Kashi do not teach that the start and end of the stroke are determined using a fixed number of samples prior to the range of time as required by the present invention, as recited in amended claim 1.

In addition to the above-noted significant difference between the present invention and the combined teachings of Sato and Kashi, the Examiner has still not shown where the concept of comparing the standard deviation of the acceleration against a threshold is suggested. Notably, the Examiner contends that he used Kashi not for a specific teaching but for its general teaching related to the concept of Standard Deviation.

The cited reference Sato compares the acceleration against a threshold. Kashi, by the Examiner's own admission, is used for its general teaching on Standard Deviation. The

Examiner's contention that a skilled artisan would look to Sato for a teaching comparing the acceleration against a threshold and a general teaching on Standard Deviations to arrive at the present invention where the Standard Deviation of the acceleration is compared against a threshold. The Applicants' respectfully disagree.

One determination of whether a patent claiming a combination of prior art elements would have been obvious focuses on "whether the improvement is more than the *predictable use* of prior art elements according to their established functions." *KSR v. Teleflex*, 127 S.Ct 1727, 167 L.Ed.2d 705, 82 USPQ2d 1385, 1389 (Sup. Ct. 2007). In the present case, it is not predictable to substitute acceleration with the Standard Deviation of the acceleration. In fact, there are an infinite number of mathematical operations and statistical measures (like, for example, average, variance, median, etc) for a skilled artisan to choose from to compare against a threshold. A general teaching on all of these mathematical operations and statistical measures are well known. However, the Examiner has not shown as to why a skilled artisan would have picked the Standard Deviation (as opposed to picking any of the other statistical measures) of acceleration.

Clearly, the Examiner has not shown where the missing claim element, namely comparing the Standard Deviation of the acceleration against a threshold, is suggested in the combined teachings of the prior art.

Claim 7 includes limitations analogous to the ones recited above in relation to claim 1, and therefore, it is patentable for analogous reasons.

Claims 3-4 and 9-10 are dependent on claims 1 and 7, and are allowable for at least the same reasons.

Allowable claims

The presently allowable claims 5, 6 and 11 have been revised to remove dependency from presently rejected claims. They should now be allowable.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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